

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

JOHN D. CERQUEIRA,

Plaintiff,

v.

Civil Action No. 05-11652-WGY

AMERICAN AIRLINES, INC.,

Defendant.

**SUPPLEMENTAL DECLARATION OF MICHAEL T. KIRKPATRICK
IN SUPPORT OF APPLICATION FOR ATTORNEYS' FEES**

I, Michael T. Kirkpatrick, declare:

1. I am an attorney with the Public Citizen Litigation Group (PCLG). PCLG and Birnbaum & Godkin, LLP, are co-counsel for plaintiff John D. Cerqueira.
2. On January 30, 2007, Mr. Cerqueira filed a motion for attorneys' fees and costs. Doc. 111. That motion sought fees and costs through the time of trial. I submit this supplemental declaration in support of Mr. Cerqueira's request for fees and costs from the time of trial through February, 2007.
3. Mr. Cerqueira requests an award of attorneys' fees for 91.2 hours of work performed by PCLG attorneys since the conclusion of trial. A detailed description of the hours claimed by PCLG is attached to this declaration as Exhibit 1. All of the entries on Exhibit 1 were contemporaneously recorded and copied from the actual time records generated by the timekeeping software used by PCLG. As shown on Exhibit 1, these hours were devoted to work related to preparing Mr. Cerqueira's fee petition and supporting documents (18.7); responding to defendant's renewed motion

for judgment as a matter of law (29.85); responding to defendant's motion for a new trial or for remittitur (26.15); and preparing for and attending the hearing on those motions (16.5).

4. Considerable billing judgment was used in recording the hours reflected in Exhibit 1. For example, I did not record any tasks that took less than fifteen minutes, and I have not included any time that was not absolutely necessary to the case. In dividing tasks between our respective firms, Mr. Godkin and I scrupulously avoided duplication of effort. Moreover, I have exercised considerable billing judgment regarding out-of-pocket expenses. We are seeking reimbursement for travel costs associated with my appearance at the hearing on American's post-trial motions, but we are not seeking reimbursement for any smaller out-of-pocket expenses incurred by PCLG since the time trial, such as charges for telephone, fax, Westlaw, PACER, and photocopying.

5. As shown on Exhibit 1, I personally performed most of the legal work by PCLG on this case since the time of trial. Brian Wolfman also worked on the case by drafting his fee declaration (Doc.118) and by reading and editing the various documents filed in this case since the entry of judgment. PCLG seeks fees at hourly rates based on the so-called *Laffey* matrix, which is used by the courts in the District of Columbia to determine prevailing market rates. The current version of the *Laffey* matrix is attached to my original declaration (Doc. 114) as Exhibit 5. My *Laffey* rate is \$375 per hour. Mr. Wolfman's *Laffey* rate is \$425 per hour. PCLG seeks an award of attorneys' fees for 87 hours of work that I performed since the time of trial through February, 2007, and for 4.2 hours of work performed by Mr. Wolfman during that time.

I declare under the penalty of perjury that the foregoing is true and correct. Executed on
February 28, 2007.

/s/ Michael T. Kirkpatrick

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EXHIBIT 1

PUBLIC CITIZEN LITIGATION GROUP
POST-TRIAL FEE CHART

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DATE	DESCRIPTION	HOURS	RATE	TOTAL	LAWYER
1/23/2007	review detailed time sheet, exercise billing judgment, and convert to excel. (3.5). Draft fee declaration and review draft declarations of others. (3.5)	7	\$375	\$2,625	Kirkpatrick, Michael
1/23/2007	Work on fee application; discuss need to seek fees based on current rates under Missouri v. Jenkins	0.2	\$425	\$85	Wolfman, Brian
1/23/2007	Read and comment on fee declarations from David Godkin and other Boston lawyers	0.6	\$425	\$255	Wolfman, Brian
1/24/2007	continue to draft and edit fee declaration, call R. Libman and B. Blustein and request declarations, discuss w/ B. Wolfman and get B. Wolfman declaration	3	\$375	\$1,125	Kirkpatrick, Michael
1/24/2007	Draft my fee declaration (1.2) and consult with MK regarding his fee declaration (2)	1.4	\$425	\$595	Wolfman, Brian
1/25/2007	Edit memo in support of fees, send comments/edits to D. Cantelo.	1.75	\$375	\$656	Kirkpatrick, Michael
1/26/2007	Edit section of fee memo on M. Kirkpatrick and other PCLG staff and send to D. Cantelo. Exchange e-mails w/ J. Sellers re: declaration in support of fees	1.5	\$375	\$563	Kirkpatrick, Michael
1/29/2007	collect declarations of Blustein, Libman and Sellers, review and send to co-counsel (.5); proofread and edit motion and memo re: fees and send comments to co-counsel (1)	1.5	\$375	\$563	Kirkpatrick, Michael
1/30/2007	respond to e-mail from client re: timing of post-trial motions and appeal	0.25	\$375	\$94	Kirkpatrick, Michael
1/30/2007	review AA's post-trial motions	0.75	\$375	\$281	Kirkpatrick, Michael
1/31/2007	teleconference w/ co-counsel re: oppositions to AA's post-trial motions (.5); begin drafting opposition to R. 50 mtn (2.5)	3	\$375	\$1,125	Kirkpatrick, Michael
2/1/2007	draft fact section and Scott v. Macy section of opp. To R. 50 motion	4.5	\$375	\$1,688	Kirkpatrick, Michael
2/2/2007	continue drafting opp. to R. 50 mtn	5.25	\$375	\$1,969	Kirkpatrick, Michael
2/5/2007	Continue drafting opposition to R. 50 motion, focus on subordinate bias and 44902 section	5.5	\$375	\$2,063	Kirkpatrick, Michael
2/6/2007	continue drafting opp to R. 50 motion, review transcript of charge, review denial of service cases	5	\$375	\$1,875	Kirkpatrick, Michael
2/7/2007	complete first draft of opp. To R. 50 motion, proofread, send to B. Wolfman for comments/edits	4	\$375	\$1,500	Kirkpatrick, Michael
2/7/2007	Read and edit our opposition to AA's post-trial motion for judgment as a matter of law	1.1	\$425	\$468	Wolfman, Brian
2/8/2007	Incorporate B. Wolfman's edits to draft of R. 50 opposition and send draft to co-counsel for review	0.5	\$375	\$188	Kirkpatrick, Michael
2/8/2007	Begin drafting opposition to R. 59 motion. Draft section on Consent Order.	6	\$375	\$2,250	Kirkpatrick, Michael

PUBLIC CITIZEN LITIGATION GROUP
POST-TRIAL FEE CHART

DATE	DESCRIPTION	HOURS	RATE	TOTAL	LAWYER
2/9/2007	continue working on opposition to rule 59 motion, concentrating on consent order section	5	\$375	\$1,875	Kirkpatrick, Michael
2/10/2007	Complete Consent Order section of R. 59 opposition, begin drafting next sections	3.5	\$375	\$1,313	Kirkpatrick, Michael
2/12/2007	complete R. 59 opposition, circulate to co-counsel for comments	7	\$375	\$2,625	Kirkpatrick, Michael
2/12/2007	Read and edit MK's draft opposition to motion for a new trial	0.9	\$425	\$383	Wolfman, Brian
2/13/2007	make final edits to both R. 50 and R. 59 oppositions, file with Court.	3.5	\$375	\$1,313	Kirkpatrick, Michael
2/14/2007	e-mail client re: status	0.25	\$375	\$94	Kirkpatrick, Michael
2/19/2007	review and edit draft reply brief on fees	0.75	\$375	\$281	Kirkpatrick, Michael
2/26/2007	review pleadings relevant to hearing on R. 50 and R. 59 motions, print cases and assemble materials to take to Boston for hearing.	3	\$375	\$1,125	Kirkpatrick, Michael
2/26/2007	Travel to Boston for motions hearing. Plane is delayed. While in airport and on plane, review cases on punitive damages, stray remarks, waiver, etc.	5.5	\$375	\$2,063	Kirkpatrick, Michael
2/27/2007	Review pleadings and cases to prepare for motions hearing (3). Attend motions hearing and present argument. (1). Travel back to DC from Boston. (4)	8	\$375	\$3,000	Kirkpatrick, Michael
2/28/2007	review post-trial time records, prepare supplemental fee declaration and send to co-counsel.	1	\$375	\$375	Kirkpatrick, Michael

Total hours: 91.2 Total amount: \$34,410.00

PUBLIC CITIZEN LITIGATION GROUP
POST-TRIAL FEE CHART BY LAWYER

	HOURS	RATE	AMOUNT
Kirkpatrick, Michael	87	\$375	\$32,625.00
Wolfman, Brian	4.2	\$425	\$1,785.00
Totals	91.2		\$34,410.00